

200920061



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

FEB 19 2009

Uniform Issue List: 402.00-00

SETTLEMENT

Legend:

Taxpayer A

Company A

Company B

Plan A

Account A

Amount A

Dear:

This letter is in response to a ruling request dated October 24, 2007, as supplemented by correspondence dated February 14, 2008, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(B) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A represents that he received a distribution from Plan X totaling Amount A. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) was due to mistake made by Company B. Taxpayer A further represents that Amount A has not been used for any other purpose.

On January 11, 2007, Taxpayer A, age 37, instructed Company A to execute a direct rollover of Amount A from Plan A (a plan described in section 401(k) of the Code) into an Individual Retirement Arrangement (IRA) at Company B.

Company B provided Taxpayer A with an account number to facilitate the direct rollover of Amount A into a money market account to be held in an IRA at Company B. During October 2007, after selecting a different investment vehicle for the funds held in the money market account, Taxpayer A discovered that the money market account was not being held in an IRA but was being held in Account A, a non-IRA investment account instead. Company B gave Taxpayer A the wrong account number to facilitate the direct rollover.

Due to transferring the account to a branch closer to Taxpayer A's home, changing the status of the investment account from "managed" to "self-managed," and changing the investment advisor, Account A's account number changed several times.

Taxpayer A has not withdrawn or otherwise used Amount A for any purpose; Amount A remains in Account A.

Based on the above facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount A contained in section 402(c)(3) of the Code in this instance.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 401(a)(31) provides the rules for governing "direct transfers of eligible rollover distributions."

Section 1.401(a)(31) of the Income Tax Regulations, Question and Answer-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

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Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented by Taxpayer A is consistent with his assertion that his failure to deposit Amount A into an IRA within the 60-day period was caused by a mistake by Company B.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount A from Plan A. Taxpayer A is granted a period of 60 days from the date of this letter ruling to contribute Amount A to a rollover IRA. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, Amount A will be considered a rollover contribution within the meaning of section 402(c)(3).

This ruling is based on the assumption that Plan A is qualified under section 401(a) of the Code.

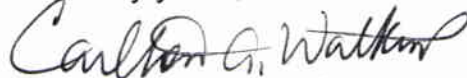
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations that may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you have any questions, please contact
at

(Badge No.

Sincerely yours,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

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Notice of Intention to Disclose, Notice 437